



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

COLUMBIA LAW REVIEW.

Vol. XV.

NOVEMBER, 1915.

No. 7

PRIZE CASES IN THE ENGLISH COURTS ARISING OUT OF THE PRESENT WAR.

On the outbreak of the present war there were, it is obvious, many cargoes at sea, on voyages from neutral to belligerent ports. Some of these cargoes were in neutral vessels and some in vessels of belligerent nationality. Other cargoes were in process of loading. In still other cases neutral shippers were under contracts, made before the outbreak of the war, to ship cargoes to belligerent ports after the outbreak of the war. A subject which therefore immediately became of vital interest to shippers in neutral countries was the law as to the rights and title of cargo, not contraband, and shipped in the absence of blockade, from a neutral port to an enemy port (1) in a neutral vessel, (2) in an enemy vessel, or (3) in a vessel flying the flag of the country whose war vessels intercept the voyage.¹

At the outset of the discussion, the following principles should be noted:

I. By the Declaration of Paris,² to which Austria, France, Great Britain, Prussia, Russia, Sardinia and Turkey were signatory parties, it was provided in article 2:

"The neutral flag covers enemy's goods with the exception of contraband of war".

This principle, known as "Free Ships, Free Goods," had earlier been incorporated in treaties made by the United States with

¹In a previous article, 15 Columbia Law Rev. 316, the questions of the right of an enemy owner to make claim in a Prize Court, the recognition of liens on enemy vessels, the transfer of enemy vessels to a neutral flag prior to and during war, and the exemption of enemy fishing vessels from capture were discussed. Ed.

²1856.

France in 1778, with Holland, 1782, with Sweden, 1783, with Prussia, 1785, with Morocco, 1787, with the Dey of Algiers, 1795, with Spain, 1795, and with Tripoli, 1796.³ The history of the position taken by the United States with respect to this principle is set forth at length by John Bassett Moore.⁴

Prior to the Crimean War, in the absence of special treaty, the Prize Courts of both England and the United States condemned enemy goods seized in neutral vessels.⁵ At the outbreak of the Crimean War in 1854, both Great Britain and France issued proclamations announcing that during the continuance of the war enemy property on board neutral vessels, with the exception of contraband of war, would not be subject to capture.⁶ In 1867, subsequent to the Declaration of Paris, the United States Supreme Court, in the case of *The Flying Scud*,⁷ again condemned enemy cargo in a neutral vessel.

Although the United States has never ratified the Declaration of Paris, the proclamation of the President, dated April 26, 1898, declared in the words of the Declaration, "The neutral flag covers enemy's goods with the exception of contraband of war."⁸

In the Russo-Japanese War, the Russian "Regulations relating to Naval Prizes" expressly adopted the Declaration of Paris provision.⁹ Japan did not adopt the provisions of the Declaration of Paris, but in *The Hermes*,¹⁰ a cargo of coal, Russian property, shipped on a neutral (Norwegian) vessel from Moji to Port Arthur was held not liable to condemnation.¹¹

³From the argument of counsel in *The Nereide* (1815) 9 Cranch, 388, at pp. 408, 409. The Treaty with Spain is discussed in *The Nereide* *supra*, *The Pizarro* (1817) 2 Wheat. 227, and *The Amiable Isabella* (1821) 6 Wheat. 1.

⁴Int. Law Digest, § 1195.

⁵*The Hoop* (1799) 1 C. Rob. 196; *The Minerva* (1800) 2 C. Rob. 302, note; *The Bremen Flugge* (1801) 4 C. Rob. 90; *The Twilling Riget* (1804) 5 C. Rob. 82; *The Hazard* (1815) 9 Cranch, 205; *The Ship Societe* (1815) 9 Cranch, 209; *The Antonia Johanna* (1816) 1 Wheat. 159.

⁶Moore, Int. Law Digest § 1195; *Esposito v. Bowden* (1857) 7 E. & B. 763, at pp. 766, 767.

⁷6 Wall. 263.

⁸*The Pedro* (1899) 175 U. S. 354, 359.

⁹Russian and Japanese Prize Cases, Vol. 1, p. 312. See *The Allanton* (1904) *id.* p. 1, at p. 14.

¹⁰(1904) Russian and Japanese Prize Cases, Vol. 2, p. 50, in the Sasebo Prize Court.

¹¹Although the court held that the cargo was contraband it was not condemned on that ground because the vessel sailed from Moji February 6, 1914, the day on which war was declared, in ignorance of the outbreak of the war.

This provision does not protect cargo guilty of attempting breach of blockade, or cargo owned by a national of the captor who is trading with the enemy,¹² or contraband. In the recent condemnation of part of the food cargoes on the Norwegian steamships *Alfred Nobel*, *Kim*, *Bjornstjerne Bjornson*, and the Swedish steamship *Fridland*,¹³ the condemnation being on the ground that the cargoes were *contraband*, the fact that the carrying vessels were neutral could not protect the cargoes from condemnation.

The provision, moreover, does not cover enemy goods seized on a vessel flying the flag of the country whose war vessels intercept the voyage, and the English Prize Court has not hesitated to condemn German, Austrian and Turkish cargo seized on British vessels.¹⁴ This question is discussed in *The Miramichi*.¹⁵

II. Subject to the foregoing provision of the Declaration of Paris, enemy property found upon the high seas is subject to seizure, not only when shipped after the outbreak of war, with knowledge of the war, but also when shipped after the outbreak of war but without knowledge of the declaration of war,¹⁶ and even when shipped before the outbreak of war.¹⁷

III. By the Declaration of Paris it was also provided in article 3:

"Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag".

The principle that the goods of a friend found on board an enemy ship are to be restored on payment of freight is found in the *Consolato del Mare*.¹⁸ The President's proclamation of April 26, 1898, contained the Declaration of Paris provision in the following words, "Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag".¹⁹ This principle had been recognized and applied by the United States Supreme

¹²The Pizarro (1817) 2 Wheat. 227, 246, 247.

¹³September 16, 1915.

¹⁴The Roumanian [1915] P. 26; The Cape Corso [1915] P. 52; The Aldworth (1914) 31 T. L. R. 36; The Juno (1914) 31 T. L. R. 131; The Clan Grant (1915) 31 T. L. R. 321; The Linaria (1915) 31 T. L. R. 396.

¹⁵[1915] P. 71, at pp. 79-82.

¹⁶The Venus (1814) 8 Cranch, 253; The Sally Magee (1865) 3 Wall. 451.

¹⁷The Ida (1854) Spinks, 26; The Juno (1914) 31 T. L. R. 131; The Roumanian [1915] P. 26; The Odessa and The Cape Corso [1915] P. 52; The Carlos F. Roses (1900) 177 U. S. 655; Cargo *ex* Mukden (1904) Russian and Japanese Prize Cases, Vol. 2, p. 25; Cargo *ex* Manchuria (1905) *id.*, 61, 65, 69; The Ekaterinoslav, (1905) *id.*, p. 1.

¹⁸Hershey, Essentials of International Public Law, § 50.

¹⁹The Pedro (1899) 175 U. S. 354, 359.

Court in 1815 in *The Brig Concord*,²⁰ and in *The Nereide*,²¹ where neutral cargo in an enemy merchant vessel was restored, although the enemy vessel was armed and resisted capture, and again in 1818 in *The Atalanta*,²² an armed enemy merchantman. The principle was again affirmed and applied in 1820 in *The London Packet*.²³

In *The Schlesien*²⁴ it was held that a submarine signalling apparatus, the property of a neutral, affixed to a German vessel, and leased under an agreement that it should remain the property of the lessor, is not "neutral goods" within this section of the Declaration of Paris, the French text of which employed the phrase "*la marchandise*". It is difficult to understand on what ground the German Prize Court at Hamburg rejected claims for loss of neutral cargo sunk in a British vessel.²⁵

IV. Where cargo is seized on a vessel which is liable to condemnation, the presumption is that the cargo itself is also liable to condemnation. This principle, stated by Grotius in 1625, thus,²⁶ "*Res in hostium navibus presumuntur esse hostium donec contrarium probetur*", has been uniformly followed,²⁷ and has been made explicit in Article 59 of the Declaration of London as follows:

"In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods."

This, however, is merely a presumption, which leaves to the claimant the right, but at the same time the *onus* of proving his title.²⁸

²⁰Cranch, 387.

²¹(1815) 9 Cranch, 388.

²²3 Wheat. 409. Further proof having been ordered, the cargo was ultimately condemned for failure of the claimant to show any proprietary interest, in (1820) 5 Wheat. 433.

²³5 Wheat. 132.

²⁴31 T. L. R. 89, in the Probate, Divorce and Admiralty Division of the High Court of Justice, Nov. 30, 1914.

²⁵See The Times, March 17, 1915.

²⁶*De Jure Belli Ac Pacis*, lib. 3, c. 6, sec. 6, quoted in 2 Wheaton Appendix, 24.

²⁷The London Packet (1820) 5 Wheat 132; The Sally Magee (1865) 3 Wall. 451, 457; The Carlos F. Roses (1900) 177 U. S. 655, 661.

²⁸The Carlos F. Roses (1900) 177 U. S. 655, 661; The London Packet (1820) 5 Wheat. 132; The Ship Ann Green and Cargo (1812) 1 Gall. 274; The Roland (March 29, 1915) 31 T. L. R. 357. See also the General Report on the Declaration of London by its drafting committee, appearing in the Supplement to the American Journal of International Law, April, 1914, p. 134.

It may be accepted as settled principle that in any case where the title becomes material, the burden of proving neutral ownership of either ship or cargo is on the claimant.²⁹ Unclaimed property is condemned without inquiry as to its ownership.³⁰ The British Prize Court Rules of 1914 provide no ship or cargo shall be condemned in the absence of an appearance or claim until six months have elapsed from the service of the writ, unless there be on the ship papers and on the evidence, if any, of the witnesses from the captured ship sufficient proof that such ship or cargo belongs to the enemy, or is otherwise liable to condemnation.³¹

Coming now to the main question under discussion, the general rule is, that a consignor on delivering goods ordered, to the master of a vessel, delivers them to him as agent of the consignee, and title to the goods is vested in the consignee on such delivery. This general rule may be departed from only by express agreement, or by a particular trade custom, whereby the master of the vessel receives the goods as agent of the consignor, and carries them on the latter's account and risk. The importance of the subject justifies a brief summary of the leading American and English decisions prior to the present war, as well as of the decisions handed down during the war.

In *The Mary and Susan*,³² a claim was made by United States citizens to cargo shipped on a United States merchant vessel from Liverpool for New York. The goods had been purchased and shipped by order of the consignees received before the declaration of war. The invoice stated the goods as bought by order and for account and risk of the consignees and the bill of lading named the claimants as consignees. It was held that title to the goods passed

²⁹The *Jenny* (1866) 5 Wall. 183, 188; The *Amiable Isabella* (1821) 6 Wheat. 1, at pp. 77, 78; The *Magnus* (1798) 1 C. Rob. 31; The *Bremen Flugge* (1801) 4 C. Rob. 90, at p. 92; The *Soglasie* (1854) Spinks, 104; The *Antares* (Mar. 8, 1915) British and Colonial Prize Cases, 261, at p. 271.

³⁰The *Schooner Adeline and Cargo* (1815) 9 Cranch, 244, 289; The *Carlos F. Roses* (1900) 177 U. S. 655, 663; The *Harrison* (1816) 1 Wheat. 298; The *Mary* (1815) 9 Cranch, 126, 142, where the court subsequently found as a matter of fact that the condemned vessel was American owned. See also the facts in *The Antonia Johanna* (1816) 1 Wheat. 159; *The Freundschaft* (1818) 3 Wheat. 14, 16; *The London Packet* (1820) 5 Wheat. 132, 133; *The Ship Ann Green and Cargo* (1812) 1 Gall. 274, 275; *The Simla* (May 10, 1915) British and Colonial Prize Cases, 281.

³¹Order XV, § 7 and Order I, § 2.

³²(1816) 1 Wheat. 25.

to the claimants on being delivered on board the vessel, and they were restored as property of United States citizens.

In *The Antonia Johanna*,³³ a Russian (neutral) ship was captured by a United States privateer on a voyage from London to St. Michels. It was held that title to cargo shipped by an English consignor to Portuguese consignees in St. Michels was in the consignees at the time of capture. Only half of this consignment was restored because one of the two partners composing the consignees' firm was a British subject resident in England.³⁴

In *The Frances, Dunham and Randolph's Claim*,³⁵ the court pointed out that if an enemy shipper in execution of an order consigns goods unconditionally to a consignee, a subject of the country of the prize court, the goods on shipment become the property of the consignee.

In *The Merrimack, Claim of W. and J. Wilkins*,³⁶ an American ship sailed from Liverpool for Baltimore with cargo, shipped by a firm, one member of which was a resident of England and the other member an American citizen and resident, and consigned to the American member of the shippers' firm. The goods were made for the claimants, Baltimore merchants, in pursuance of orders received before the war, and the invoice was in the name of the claimants and was sent direct to them. An accompanying letter referred to the goods as belonging to the claimants, sold on credit and shipped on the claimants' account, and also showed that consignment to the American member of the shippers' firm was merely a device, under the belief that if seized he could more easily claim them. The court found that the consignee was agent for the claimants, and that title to the property was in the claimants. The goods were therefore restored.

In *The Merrimack, McKean and Woodland's Claim*,³⁷ goods were ordered by American claimants and shipped by a British firm consigned to the shippers' agent, a United States citizen, by bill of lading reading, "On account and risk of an American citizen". The invoice also was made out to the shippers' agent. By accompanying letter, however, it appeared that the shippers considered the goods the property of the claimants, shipped on the latter's account and risk and sold on credit. The court found that the

³³(1816) 1 Wheat. 159.

³⁴See *infra*, p. 587.

³⁵(1814) 8 Cranch, 354, 357, affirming 1 Gall. *445.

³⁶(1814) 8 Cranch, 317.

³⁷(1814) 8 Cranch, 317.

shippers' agent was made the claimants' agent and, title to the property being in the American claimants, the goods were restored.

In *The Sally Magee*,³⁸ cargo was shipped from Rio for Richmond, consigned to Richmond firms. Part of the cargo was claimed by neutral shippers, on the ground that the consignments were not in conformity with orders received, and therefore title would not pass to the consignees until the goods were accepted by them. The claimants did not produce evidence to show that the goods were not as ordered, and the goods were therefore condemned as the property of enemy consignees.

In *The Prize Cases, The Crenshaw*,³⁹ title to goods shipped from Richmond, on a confederate vessel, to Liverpool, was held to be in the British consignee.

The principle that cargo ordered becomes the property of the consignee on shipment is sometimes expressed in this form: Cargo consigned to become the property of the enemy on arrival is enemy property, and is not protected by the neutrality of the shipper.

In *The Ship Ann Green and Cargo*,⁴⁰ Mr. Justice Story said:⁴¹ "The cases are, as I think, settled upon just principles, that decide that in time of war, property shall not be permitted to change character in its transit; nor shall property consigned, to become the property of the enemy on arrival, be protected by the neutrality of the shipper."

In *The Sally*,⁴² a cargo of corn was shipped by Baltimore merchants on an American ship, ostensibly for account and risk of Philadelphia merchants, and consigned to them at Havre. The endorsement on the bills of lading showed the Mayor of Havre as consignee, and from accompanying letters it appeared that the cargo had been ordered by the French Government and bought by the French Minister in the United States. Lord Stowell, in condemning the cargo as property of the French consignee, said:⁴³ "Property going to be delivered in the enemy's country, and under a contract to become the property of the enemy immediately on arrival, if taken *in transitu*, is to be considered as enemies' property". In such a case capture is equivalent to delivery.⁴⁴

³⁸(1865) 3 Wall. 451.

³⁹(1862) 2 Black, 635, 680.

⁴⁰(1812) 1 Gall. 274.

⁴¹At p. *291.

⁴²(1795) 3 C. Rob. 300, note.

⁴³At p. 302, note.

⁴⁴*Id.*

In *The Anna Catharina*,⁴⁵ a cargo on a Danish ship from Hamburg to La Guayra was described in the ship's papers "as going to take the chance of the market." It appeared, however, by a letter that the goods had been shipped under contract with the Spanish Government of the Caracas. They were condemned as enemy property. Lord Stowell said:⁴⁶

"If the cargo is to be taken as being actually become *Spanish* property, there will be an end of the case, under the rule which renders goods going to a belligerent, to become his property immediately on arrival, subject to confiscation", and again:⁴⁷

"This cargo was going in time of war to the port of a belligerent, there to become the property of the belligerent, immediately upon arrival, and the legal consequence of condemnation would on that ground alone attach upon it."

It was pointed out in *The Concordia Affinitatis*,⁴⁸ that to obtain restitution of cargo as neutral, the proof must show not only that it was neutral at the time of shipment and of capture, but that it would have continued neutral if it had reached the port of destination.

It may appear, however, that by express agreement or trade custom, the shipper has retained title in the cargo, or that it has been shipped at his account and risk, or that it has been consigned to the shipper's agent, not to be delivered by the latter to the vendee until the agent receives payment. In such cases title remains in the shipper at the time of capture.

The Frances, Irvin's Claim,⁴⁹ was a claim by a United States consignee of cargo shipped by British firms to him under bills of lading which stated that *the shipments were made on account and risk of the shippers*. As the title was expressly reserved in the enemy consignors, the goods were condemned as enemy property. Washington, J., said:⁵⁰ "When goods are sent upon the account and risk of the shipper, the delivery to the master is a delivery to him as agent of the shipper, not of the consignee."

In *The London Packet*,⁵¹ hides shipped on a British vessel by

⁴⁵(1802) 4 C. Rob. 107.

⁴⁶At p. 111.

⁴⁷At p. 118.

⁴⁸(1779) Hay & Marriott, 289.

⁴⁹(1814) 8 Cranch, 418.

⁵⁰At p. 420.

⁵¹(1820) 5 Wheat. 132.

a Spanish subject at Buenos Ayres consigned to his agent in London by a bill of lading which showed that *the goods were at the shipper's account and risk*, were held to be the property of the neutral shipper.

In *The Amy Warwick*,⁵² coffee from Rio to Richmond had been purchased by the claimants, an English firm at Rio, in part with funds of a Richmond firm, and in part with their own funds. The coffee was consigned to the shippers' order, and the bill of lading was endorsed to their New York house. The coffee having been sold by the court, the claimants were awarded restitution of the amount paid by their Rio house in the purchase of the coffee.

In *The Frances, Kennedy's Claim*,⁵³ goods were shipped by a British subject to a United States citizen at New York, invoiced to the consignee, and consigned to him "on account and risk as per invoice." A letter from the shipper, however, referred to the goods as "our goods", and contained other indications that *the goods were the property of the shipper*. They were condemned as enemy property.

In *The Abo*,⁵⁴ cargo was shipped on a Russian vessel from Cadiz, before war, to a named consignee at Abo. It was claimed by a British merchant at Cadiz, who offered the shipper's bill of lading bearing the shipper's affidavit that the goods were his own property and were shipped on his sole account and risk. The master's bill of lading had no notation on it. In ordering further proof, Dr. Lushington said:⁵⁵

"I know of no principle laid down in the Prize Court, by which I am bound to hold that, under such circumstances as the present [shipment before war], the consignor has divested himself of his right and title. There are innumerable cases in which a merchant may send property to some agent—some consignee, and yet retain a right and control over it. There are innumerable instances where goods are sent to a consignee without previous order or direction, and, in a great many cases, without previous communication with the consignee himself."

Where it appears that the consignee has the right of accepting or rejecting the goods on arrival, title does not pass to the consignee until he has accepted them. In *The Frances, Dunham and*

⁵²(1862) 2 Sprague, 150, affirmed in (1862) 2 Black, 635, 675.

⁵³(1814) 8 Cranch, 358.

⁵⁴(1854) Spinks, 42.

⁵⁵At p. 46.

Randolph's Claim,⁵⁶ goods were consigned by a British subject in Scotland to United States citizens at New York. The invoice stated that the goods were shipped on the consignees' account and risk. An accompanying letter, however, showed that the goods were not in conformity with orders received from the consignee, and expressly gave them *the option of accepting or rejecting the entire consignment*. It was held that title remained in the enemy consignor, and the goods were condemned.

Nor does title pass to the consignee where he has not ordered the goods. In *The Cousine Marianne*,⁵⁷ where a Prussian vessel was captured on a voyage from Bordeaux to London, having a license permitting certain British merchants to import cargo into Plymouth, it was held that in order to find property in the consignee there must be either an order for the goods or an acceptance of them by the consignee prior to capture. As neither was shown the property was held to be in the enemy consignor, and it was condemned.⁵⁸

In *The Frances, French's Claim*,⁵⁹ goods were consigned by a British subject in Scotland to A. & J. Auchincloss, of New York, with orders to remit the proceeds to the shipper. The claimant, an American citizen, alleged that the goods had been previously ordered by him through A. & J. Auchincloss to be imported on his account and risk. From the correspondence it was doubtful whether the goods were to be sold as the property of the consignor or of the consignees. As no order from the consignees to the shipper was produced, the court condemned the goods as enemy property.

A somewhat similar situation arose in *The Josephine*.⁶⁰ Ingots of silver on a voyage from Havre to Hamburg were sent, according to the ship's papers, for account of Gelston, an American resident in France, and were claimed by Ingraham, a New York merchant, as being the proceeds of a cargo of provisions sent by the claimant from the United States to his agent, Gelston, in France, for sale. Gelston did not remit the proceeds to America, but advised Ingraham to draw on Godefroy in Hamburg, and arranged to have the American Consul at Paris put Godefroy in funds. The American Consul shipped the silver to Godefroy,

⁵⁶(1814) 8 Cranch, 354, and (1815) 9 Cranch, 183.

⁵⁷(1810) Edw. 346.

⁵⁸See also *The Sally Magee* (1865) 3 Wall. 451, at pp. 457, 458.

⁵⁹(1814) 8 Cranch, 359.

⁶⁰(1801) 4 C. Rob. 25.

his agent, without notifying Godefroy. It was held that as the silver was not the specific proceeds of the cargo of provisions, and as it was sent by a resident of France to his agent in Hamburg, subject at all times to the shipper's control, the title was in the shipper, and the silver was condemned as enemy property.

Goods which are shipped to be sold by the consignee for the shipper of course remain the property of the shipper.⁶¹

A case in which a custom of the trade, imposing the risk of the goods during transit on the shipper, was recognized, was *The Packet de Bilbao*.⁶² In that case cargo on a Spanish vessel from London to Corruna, ordered by a Spanish house and shipped by British subjects before the war, was held the property of the shippers. In decreeing restitution, Lord Stowell pointed out that a contract by which the shipper assumes the risk of the goods during transit is valid if made when there is neither war nor prospect of war, such case being entirely different from a similar contract made *flagrante bello*, and said:⁶³

"In time of profound peace, when there is no prospect of approaching war, there would unquestionably be nothing illegal in contracting that the whole risk should fall on the consignor, till the goods came into possession of the consignee. In time of peace they may divide their risk as they please, and nobody has a right to say they shall not; it would not be at all illegal, that goods not shipped in time of war, or in contemplation of war, should be at the risk of the shipper. In time of war this cannot be permitted, for it would at once put an end to all captures at sea; the risk would in all cases be laid on the consignor, where it suited the purpose of protection; on every contemplation of a war, this contrivance would be practised in all consignments from neutral points to the enemy's country, to the manifest defrauding of all rights of capture; it is therefore considered to be an invalid contract in time of war; or, to express it more accurately, it is a contract which, if made in war, has this effect; that the captor has a right to seize it and convert the property to his own use; for he having all the rights that belong to his enemy, is authorized to have his taking possession considered as equivalent to an actual delivery to his enemy; and the

⁶¹The *Frances*, *Gillespie's Claim* (1814) 8 Cranch, 363; *The Euphrates* (1814) 8 Cranch, 385; *The Ship Ann Green and Cargo* (1812) 1 Gall. 274, 291; *The Primus* (1854) Spinks, 48; *The Linaria* (Apr. 20, 1915) 31 T. L. R. 396.

⁶²(1799) 2 C. Rob. 133.

⁶³At pp. 134-135.

shipper who put it on board during a time of war, must be presumed to know the rule, and to secure himself in his agreement with the consignee, against the contingency of any loss to himself that can arise from capture."⁶⁴

If goods are consigned to the shipper's agent, not to be delivered to the vendee until the agent receives payment, it is clear that the shipper has not parted with his title. In *The Aurora*,⁶⁵ goods were shipped from Spain to Ireland, under a license for the importation of British goods, consigned to the shippers' agents of London, who were to deliver them to a Belfast merchant, *if satisfied as to payment*. It was held that title was in the enemy shippers, and the goods were condemned.

In *The Merrimack*, *Kimmel and Albert's Claim*, and *John J. Browning & Company's Claim*,⁶⁶ goods were ordered from Great Britain by the claimants, United States citizens. According to the invoices and bills of lading, the property was in the claimants, but all these documents were sent to the shipper's agent in the United States, *to be delivered to the claimants only on cash payment*. The goods were condemned as property of the enemy shipper.

Thus in the present war, in *The Miramichi*,⁶⁷ Muir & Co., New York merchants, on June 25, 1914, contracted to sell wheat to vendees in Germany for July shipment, and caused the wheat to be shipped at Galveston before the war and without anticipation of war, on board the British steamship *Miramichi* for Rotterdam. The vessel put into England and the cargo was seized September 1, 1914. The contract was for shipment to Rotterdam on c. i. f. terms. *Payment was to be made "by check against documents"*. The bill of lading was in favor of the shipper from whom the vendors had purchased the wheat, and was endorsed in blank. The vendors drew a bill of exchange on the vendees and discounted it with the Guaranty Trust Company of New York, depositing with the latter the bill of lading and certificates of insurance, to be delivered upon payment by the vendees. The Trust Company forwarded the documents to a Berlin bank, and the vendors forwarded an invoice to the vendees.

⁶⁴See to the same effect, *The Atlas* (1801) 3 C. Rob. 299.

⁶⁵(1802) 4 C. Rob. 218.

⁶⁶(1814) 8 Cranch, 317.

⁶⁷[1915] P. 71, in the Probate, Divorce and Admiralty Division of the High Court of Justice, Nov. 23, 1914.

On presentation of the documents the vendees refused to accept them. Sir Samuel Evans said:⁶⁸

"Where, as in the present case, all the material parts of the business transaction took place *bona fide* during peace, and it becomes necessary to decide questions of property, I hold that the law to be applied is the ordinary municipal law governing contracts for the sale and purchase of goods.

"Where goods are contracted to be sold and are shipped during peace without any anticipation of imminent war, and are seized or captured afloat after war has supervened, the cardinal principle is, in my opinion, that they are not subject to seizure or capture unless under the contract the property in the goods has by that time passed to the enemy.

"It may be that the element of risk may legitimately enter into the consideration of the question whether the property has passed or has been transferred. But the incidence of risk or loss is not by any means the determining factor of property or ownership. (cf. S. 20 of the Sale of Goods Act, 1893.) The main determining factor is whether according to the intention of seller and buyer the property has passed."

It was held that the vendors had retained the *jus disponendi* of the goods at the time of capture, and that they would remain the property of the vendors until the shipping documents had been tendered to and taken up by the buyers and the bill of exchange paid. The cargo having been sold by the court, the proceeds were ordered restored to the claimants.⁶⁹

Where goods were shipped before war by German vendors under a c. i. f. contract of sale, and after the outbreak of war the British vendees took up the documents, such acceptance of the documents was illegal and void, as trading with the enemy, and there being no valid passing of title from the vendors, the goods were condemned as enemy property in *The Barenfels* (No. 2).^{69a}

The decision in *The Miramichi* is in accord with *Wait v. Baker*,⁷⁰ *Ogg v. Shuter*,⁷¹ *Mirabita v. Imperial Ottoman Bank*,⁷²

⁶⁸At p. 77.

⁶⁹Where captured cargo is sold, and on further proof restoration of the proceeds is ordered, the claimants cannot claim compensation on the ground that the proceeds are less than the value of the cargo, if the sale has been fair. *The Two Susannahs* (1799) 2 C. Rob. 132.

^{69a}(May 26, 1915) British and Colonial Prize Cases, 395, in the Prize Court for Egypt.

⁷⁰(1848) 2 Exch. 1.

⁷¹(1875) 1 C. P. D. 47, in the Court of Appeal.

⁷²(1878) 3 Ex. 164, in the Court of Appeal.

Turner v. The Trustees of the Liverpool Docks,⁷³ *Dupont v. British South Africa Co.*,⁷⁴ *Orient Co., Ltd. v. Brekke & Howlid*,⁷⁵ and *Arnhold, Karberg & Co. v. Blythe, Greene, Jourdain & Co., Ltd.*,⁷⁶ which were not prize cases. It is not inconsistent with the law that under a c. i. f. contract the vendee must accept the documents, if valid, when tendered, and cannot refuse to do so until he has had an opportunity to inspect the goods;⁷⁷ nor with the law that after shipment under a c. i. f. contract any risk of loss, either partial or total, is on the vendee, delivery of valid shipping documents, viz., bill of lading, invoice and insurance certificates, being the equivalent of delivery of the goods.⁷⁸

In the Russo-Japanese War, the Japanese Prize Court at Sasebo stated the law on this subject, in accord with the American and English decisions, as follows:⁷⁹ "It is recognized by International Law that when goods are placed on board a vessel and despatched to the address of a person residing in the enemy country, *unless there is evidence to the contrary*, the ownership of such goods passes to the consignee from the moment they are shipped."⁸⁰ The Japanese Higher Prize Court, however, stated the rule without qualification as follows:⁸¹ "Goods shipped by a person living outside the enemy territory, in an enemy vessel and consigned to a person residing in the enemy territory, are enemy property and liable to condemnation. This is a rule

⁷³(1851) 6 Exch. 543.

⁷⁴(1901) 18 T. L. R. 24.

⁷⁵[1913] 1 K. B. 531.

⁷⁶(1915) 31 T. L. R. 351, 352.

⁷⁷*E. Clemens Horst Co. v. Biddell Bros.* [1912] A. C. 18, in the House of Lords.

⁷⁸*Tregelles v. Sewell* (1862) 7 H. & N. 573, action to recover back part of purchase price on account of loss of part of goods during the voyage; judgment for defendant. *C. Groom Ltd. v. Barber* [1915] 1 K. B. 316, vendor held entitled to purchase price on tender of documents although the goods had been sunk by the enemy. The United States Supreme Court recognized a contract under which title remained in the vendor although the risk of the goods was on the vendee, in *The Elge Cotton Cases* (1874) 22 Wall. 180, arising under the Captured and Abandoned Property Act of 1863.

⁷⁹*Cargo ex. Mukden, Boeddinghaus' Claim* (1904) Russian and Japanese Prize Cases, Vol. 2, p. 19, at p. 20.

⁸⁰See to the same effect by the same court, *Cargo ex. Mukden, Yak Yuk Chang's Claim* (1904) *id.*, p. 25, at p. 26; *Cargo ex. Manchuria, China Sugar Refining Company's Claim* (1904) *id.*, p. 59, at p. 60; *An Huo Tai's Claim* (1905) *id.*, p. 65, at p. 66; *Huth & Company's Claim* (1905) *id.*, 69, at p. 70.

⁸¹*The Mukden* (1905) Russian and Japanese Prize Cases, Vol. 2, p. 12, at p. 16.

recognized by international usage, and this Court considers it fair and reasonable."⁸²

The statement of the rule by the Sasebo Prize Court is, it is submitted, correct, and the statement of the Higher Prize Court too stringent. In all of the cases cited the goods were shipped before the outbreak of war and without anticipation of war, and although they may have been properly condemned as enemy cargo, for failure to show title reserved in the consignor, it would seem that the consignor should be allowed, where shipment has been made before war, to show title reserved in him, if such is the fact.⁸³ The statement of the rule as made by the Japanese Higher Prize Court would not allow the consignor the right to show such fact.

The situation becomes more complex, but the legal principles applied are the same, in cases where a third party, either a neutral or a national of the captor, has advanced money on the security of a bill of lading.⁸⁴ The question of the rights of third parties who have advanced money on the security of bills of lading arose in England in the Crimean War, in the United States in the Spanish War, in Japan in the Russo-Japanese War and again in England in the present war.

In *The Ida*,⁸⁵ a Russian brig sailed from Rio, before the outbreak of war, with a cargo of coffee for Helsingfors, Finland. It appeared that certain Finlanders had sent the brig to Brazil for coffee which was to be purchased in Rio and shipped on account and at the risk of the Finish merchants. As the vendees had no credit in Rio, the neutral shippers endorsed the bills of lading covering the cargo to the claimants, a Hamburg firm, and drew on the claimants, sending the bills of lading as security. The

⁸²See to the same effect by the same court, *Cargo ex. Mukden, Kunst and Alber's Claim* (1905) *id.*, p. 31, at p. 35; *Claim of the Russo-Chinese Bank, id.*, p. 36, at p. 37; *The Manchuria* (1905) *id.*, p. 52, at p. 56; *Cargo ex. Manchuria, Kunst and Alber's Claim* (1905) *id.*, p. 61, at p. 63.

⁸³See the quotation from *The Packet de Bilbao, supra*, p. 577.

⁸⁴Excepting only a master's lien for freight, (See 15 Columbia Law Rev. 326) a claim of lien against enemy cargo is not recognized by a Prize Court. *The Frances, Irvin's Claim* (1814) 8 Cranch, 418, where a United States consignee's claim of lien on enemy cargo for advances made to the shippers in consideration of one consignment and for general balance of account, as factor with respect to another consignment, was denied. See also, *The Sally Magee* (1865) 3 Wall. 451, at p. 460, and *The Marianna* (1805) 6 C. Rob. 24. For a discussion of liens on enemy vessels captured as prize, see 15 Columbia Law Rev. 325, 326.

⁸⁵(1854) Spinks, 26.

decision was that the claimants merely held the bills of lading as security for an advance, and that the legal title to the cargo was not in them, although they were endorsees of the bills of lading. The goods were condemned as Russian property.

*The Carlos F. Roses*⁸⁶ presented the same question. A Spanish bark sailed from Montevideo, before war, for Havana. The ship's manifest showed that the entire cargo was shipped by neutrals of Montevideo "to order". The bills of lading were endorsed in blank by the shippers. The invoices showed that the goods were shipped for account and risk of the owners of the vessel and Pedro Pages of Havana, both Spanish subjects, and it was admitted that the cargo was ultimately destined for Pedro Pages. The shippers drew a bill of exchange for part of the cargo on the claimants, a London firm. The master also drew for part of the cargo on the claimants. The claimants accepted and paid both bills of exchange, and held the bills of lading as security. Mr. Chief Justice Fuller, in delivering the opinion of the court, said:⁸⁷ "A pledgee to whom a bill of lading is given as security gets the legal title to the goods and the right of possession only if such is the intention of the parties, and that intention is open to explanation. * * * The assignment of bills of lading transfers the *jus ad rem*, but not necessarily the *jus in rem*". It was held that the claimants' interest was merely that of holder of security for a debt, and that liens on enemy cargo are not recognized by a Prize Court; the legal title to the cargo was in Spanish subjects, and it was therefore condemned as enemy property.

In *Cargo ex Manchuria, Huth & Company's Claim*,⁸⁸ a British firm in Colombo shipped tea to Moscow via Dalny, on bills of lading made out for delivery to the order of the consignors in Moscow. The consignors then drew a bill of exchange on London bankers for account of a Tea Company of Moscow, and attached the bills of lading to the bill of exchange. The shipment was intended for the Tea Company. The London bankers, the claimants, accepted and paid the bill of exchange. The goods were seized on the Russian vessel *Manchuria* on the voyage from Colombo to Dalny. It was held that the goods were the property of the Russian Tea Company in Moscow, the claim-

⁸⁶(1900) 177 U. S. 655. In paragraph (2) of the head note of this case it is manifest that "consignors" should read "consignees."

⁸⁷At pp. 665, 666.

⁸⁸(1905) Russian and Japanese Prize Cases, Vol. 2, p. 69.

ants' interest being only that of holders of the bills of lading to secure their advances, and the tea was condemned as enemy property.

In the present war the same question arose in *The Odessa and The Cape Corso*.⁸⁹ The German barque *Odessa* from Valparaiso with a cargo of nitrate of soda, sold by Chilean merchants at Valparaiso to a German company of Hamburg, was captured at sea August 19, 1914. By business arrangement between the German vendees and London bankers, the latter accepted bills of exchange in favor of the Chilean vendors against the cargo, and received as security a bill of lading which was in favor of the London bankers, or their assigns, and in which the vessel was stated to be "bound for Channel for orders". The bills of exchange had been accepted by the London bankers before the outbreak of the war, and were paid in full by them after the outbreak of war. The vessel was condemned as enemy property and the cargo was claimed by the London bankers.

The *Cape Corso*, a British steamship, sailed from Japan, for Rotterdam, or at charterer's option, Hamburg, with a cargo of timber sold by a resident of Japan to a German subject of Hamburg, who was also the charterer of the vessel. By business arrangement between the German vendee and a London firm, the latter, before the war, accepted bills of exchange for the cargo, and paid them after the outbreak of war. The bills of lading, made out to the order of the vendor, and endorsed by him in blank, were received by the London firm as security for their acceptances. They were then delivered by them to their agent in Hamburg to be delivered to the vendee against payment. The vendee had, prior to the outbreak of war, refused to take up the bills of lading for part of the timber. The vessel having put into Brixham, the cargo was there seized, August 26, 1914, and was claimed by the London firm.

It was held that in spite of the fact that the bills of lading had been made out in *The Odessa* to the London bankers and in *The Cape Corso* to the vendor and endorsed by him in blank, the title to both cargoes was in the German vendees, and the British claimants were merely pledgees of the bills of lading as security for their advances. The claims of the pledgees were dismissed, and both cargoes were condemned as enemy property.

⁸⁹[1915] P. 52, in the Probate, Divorce and Admiralty Division of the High Court of Justice, December 21, 1914.

The Odessa was followed in *The Linaria*,⁹⁰ where a British firm, selling agents in London of Turkish merchants in Bagdad, who had accepted bills of exchange covering a Turkish cargo of tobacco, were denied any right to the proceeds of the condemned cargo.

Where a pledgee, however, before capture, sells the cargo to reimburse himself, his vendee's title is recognized by the Prize Court. In *The Ningchow*,⁹¹ Germans shipped vegetable tallow, under contract, from Hankow to a British firm at Liverpool before war, and pledged the goods to Japanese bankers, who were indorsees and holders of the bills of lading, as security for advances at the time of shipment. The purchasers having declined to take up the documents, the pledgees sold the goods to another British firm before they were seized. It was held that "when the contracts for sale of October 14 and 22 were made, the enemy pledgors had ceased to be the owners of the goods, which were subsequently seized. These goods were therefore not subject to seizure as enemy goods."

In each case the question, who holds the legal title to the cargo seized, is a question of fact. It will be noted from the authorities discussed that neither the bill of lading or ship's manifest, nor the invoice, is of itself conclusive evidence of title. In many of the cases title was determined by none of these documents, but by contemporaneous correspondence between the parties, and the task of the court is to determine whether as a matter of fact the claimant held title to the property at the time of shipment and of capture, or merely held documents covering the property as security for a loan or advances. The consignee named in a bill of lading or the holder of a bill of lading endorsed in blank may demand delivery of the goods from the ship and at common law is regarded as the owner of the goods in so far as the rights and obligations of the shipowner are concerned; and if the bill of lading has been delivered to him as security for advances he may sell the goods to reimburse himself, passing the legal title. But this ability to obtain possession of the goods or even to pass title is not the equivalent of title in a Prize Court. The question of title is one of fact, to be found from the intent of the parties.

⁹⁰31 T. L. R. 396, in the Probate, Divorce and Admiralty Division of the High Court of Justice, April 20, 1915.

⁹¹31 T. L. R. 470, in the Probate, Divorce and Admiralty Division of the High Court of Justice, June 4, 1915.

Referring to the difference between "legal title" at common law and in prize, Dr. Lushington said:⁹² "I would here observe that it is always important to bear in mind, that there is a totally different question arising in the Prize Court from that which arises in the Court of Common Law. At Common Law it may be very true that, by a bill of lading, property may be so vested in the consignee that he may be capable of selling it, though he would be responsible to the consignor. It may be true that, between the consignor and third parties, he would have a good title to sell, but that is not the question which the Court looks to here. This Court inquires in whom the property is vested, and not merely at what is called a legal title at Common Law."

The fact that the ultimate loss will fall on neutrals will not exempt enemy cargo from condemnation. Thus in *The Manchuria*,⁹³ the claim of neutral insurers of enemy cargo was rejected. The British government, however, has appointed a Prize Claims Committee to consider claims made by third parties against ships or cargoes which have been condemned by the Prize Court, in order that the decisions of that Court may not cause unfair suffering to those who have charges in respect of such ships and cargoes.⁹⁴

A transfer of title to cargo in transit is valid if made before war and not in contemplation of war.⁹⁵ Thus in the present war, in *The Southfield*,⁹⁶ where barley, shipped in a British vessel from the Black Sea by German merchants "to order, Emden", July 16, 1914, was bought from the shippers by two Dutch merchants of Groningen, July 20, 1914 and July 25, 1914, respectively, the court found that the claimants became owners before war and without anticipation of war, and held the transfer of title valid.

But a transfer of title in transit is not recognized by a Prize

⁹²The Abo (1854) Spinks, 42, at p. 46.

⁹³(1905) Russian and Japanese Prize Cases, Vol. 2, p. 52, in the Japanese Higher Prize Court.

⁹⁴The Odessa [1915] P. 52, 58, note. See The London Gazette, March 26, 1915, p. 2982.

⁹⁵The Vrow Margaretha (1799) 1 C. Rob. 336; Spanish owned cargo shipped from Spain to Holland on a Dutch vessel before Spanish hostilities, and transferred to a merchant of Hamburg during the voyage, restored. See also The Jan Frederick (1804) 5 C. Rob. 128, at p. 132.

⁹⁶31 T. L. R. 577, in the Probate, Divorce and Admiralty Division of the High Court of Justice, July 15, 1915.

Court if made after the outbreak of war,⁹⁷ or even before war but in contemplation of war.⁹⁸ The reason for the rule against recognizing the validity of transfers of cargo in transit either in contemplation of war or during war is, that if such rule did not exist, all goods of the enemy at sea would be protected by such transfers, the *bona fides* of which it would be impossible for the Prize Court to ascertain. In adverting to this rule, Lord Stowell said:⁹⁹

"In time of war this is prohibited as a vicious contract; being a fraud on belligerent rights, not only in the particular transaction, but in the great facility which it would necessarily introduce, of evading those rights beyond the possibility of detection. It is a road that, in time of war, must be shut up; for although honest men might be induced to travel it with very innocent intentions, the far greater proportion of those who passed, would use it only for sinister purposes, and with views of fraud on the rights of the Belligerent."

A fortiori, an attempted transfer of title, by sale or by granting a lien, by the enemy owner of cargo to a neutral *after capture* is invalid. In *The Sally Magee*,¹⁰⁰ a lien was claimed by loyal citizens on part of a cargo of coffee, admitted to be enemy property, captured on a voyage from Rio to Richmond. The consignees, being indebted to the claimants, authorized the latter to receive and sell the coffee and apply the proceeds as far as necessary to payment of the debt. The authorization was given after capture. In refusing to recognize the lien, Mr. Justice Swayne said:¹⁰¹

"The ownership of property in such cases cannot be changed while it is *in transitu*. The capture clothes the captors with all the rights of the owner which subsisted at the commencement of the voyage, and anything done thereafter, designed to incumber the property, or change its ownership, is a nullity. No lien created at any time by the secret convention of the parties is recog-

⁹⁷The *Danckebaar Africaan* (1798) 1 C. Rob. 107; The *Vrouw Margaretha* (1799) 1 C. Rob. 336, 338; The *Carl Walter* (1802) 4 C. Rob. 207; The *Jan Frederick* (1804) 5 C. Rob. 128, 132; The *Twende Venner* (1807) 6 C. Rob. 329, note.

⁹⁸The *Jan Frederick* (1804) 5 C. Rob. 128, Dutch cargo on Dutch ships from Surinam to Holland, sold to a merchant of Emden before war, but in order to withdraw the property from the risk of capture, condemned.

⁹⁹The *Jan Frederick* (1804) 5 C. Rob. 128, at p. 132.

¹⁰⁰(1865) 3 Wall. 451.

¹⁰¹At p. 460.

nized. Sound public policy and the right administration of justice forbid it. This rule is rigidly enforced by all prize tribunals. The property was shipped to the enemy. It was diverted from its course by the capture. The allegation of a lien wears the appearance of an afterthought. It strikes us as a scheme devised under pressure, to save, if possible, something from the vortex which it was foreseen inevitably awaited the vessel and cargo."

Thus also in *The Aldworth*,¹⁰² in the present war, where a cargo of coal, sold by a Welsh firm to an Austrian company in July, 1914, was seized on board a British vessel in Cardiff, August 21, 1914, it was held that a resale to other purchasers after the seizure did not change the title to the coal, which remained as of the time of seizure. The coal was condemned as enemy property.

The only exception to the rule that the title to enemy property may not be changed during transit in time of war is in a case where the neutral shipper exercises the right of stoppage *in transitu* on the insolvency of an enemy consignee. The insolvency, however, must be an actual fact, and not merely feared.¹⁰³ The general rule and the exception are embodied together in Article 60 of the Declaration of London, as follows:

"Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded.

"If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character."

Where cargo is owned in part by neutral and in part by enemy interests, the court restores the neutral part and condemns the enemy part.¹⁰⁴ Thus in *The Clan Grant*,¹⁰⁵ in the present war, where cargo was owned by a partnership consisting of three Germans, one domiciled in Khartum and the other two in Ham-

¹⁰²31 T. L. R. 36, in the Probate, Divorce and Admiralty Division of the High Court of Justice, October 26, 1914.

¹⁰³*The Constantia* (1807) 6 C. Rob. 321.

¹⁰⁴*The Antonia Johanna* (1816) 1 Wheat. 159; *The San Jose Indiano and Cargo* (1814) 2 Gall. *268, at pp. *301, *303; *The Venus* (1814) 8 Cranch, 253; *The Citto* (1800) 3 C. Rob. 38.

¹⁰⁵31 T. L. R. 321, in the Probate, Divorce and Admiralty Division of the High Court of Justice, March 16, 1915.

burg, the third interest belonging to the resident of Khartum was restored and the other two-thirds were condemned; and in *The Roland*,¹⁰⁶ where tobacco was shipped from the United States for Bremen for sale on joint adventure of business firms in the United States and a resident of Bremen, the quarter interest of the latter was condemned and the three-quarters interest of the former was restored.

One further question remains. Is the "enemy" character of cargo to be determined by the owner's nationality or by his commercial domicile? Article 58 of the Declaration of London provides:

"The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner."

By English and American law the test of neutral or enemy character of the owner is commercial domicile.¹⁰⁷ The Japanese law is the same.¹⁰⁸ Germany applies the Continental view and holds that "the neutral or enemy character of goods found on board an enemy vessel is determined by the nationality of the owner."¹⁰⁹ The Declaration of London leaves this question undecided, no agreement having been reached on this point. A compromise was suggested in the following form:

"The neutral or enemy character of goods found on board an enemy vessel, is determined by the neutral or enemy nationality

¹⁰⁶31 T. L. R. 357, in the Probate, Divorce and Admiralty Division of the High Court of Justice, March 29, 1915.

¹⁰⁷*The Venus* (1814) 8 Cranch, 253; *The Frances*, Gillespie's Claim (1814) 8 Cranch, 363; *The Pizarro* (1817) 2 Wheat. 227, at p. 246; *The Friendschaft* (1818) 3 Wheat. 14; *Prize Cases* (1862) 2 Black, 635, at pp. 671 *et seq.*; *The Flying Scud* (1867) 6 Wall. 263; *The Ship Ann Green and Cargo* (1812) 1 Gall. 274, at p. 285; *The Josephine* (1801) 4 C. Rob. 25, at p. 26; *The Abo* (1854) Spinks, 42 at pp. 44, 45; *The Vriendschap* (1802) 4 C. Rob. 166; *The Angelique* (1801) 3 C. Rob. Appendix, p. 7; *The Indian Chief* (1801) 3 C. Rob. 12, at pp. 18 and 27; *The Jonge Klassina* (1804) 5 C. Rob. 297, at p. 302; *La Virginie* (1804) 5 C. Rob. 98; *The Boedes Lust* (1804) 5 C. Rob. 233; *The Gerasimo* (1857) 11 Moore P. C. 88, at p. 96; *The Johanna Emilie* (1854) Spinks, 12, at pp. 15 and 16; *Porter v. Freudenberg* (1915) 20 Com. Cas. 189, in the Court of Appeal; *The Postillion* (1779) Hay & Marriott 245; *The Citto* (1800) 3 C. Rob. 38; *The Portland* (1800) 3 C. Rob. 41.

¹⁰⁸*Cargo ex. Ekaterinoslav* (1904) Russian and Japanese Prize Cases, Vol. 2, p. 10; *The Mukden* (1905) *id.*, pp. 12 and 25; *The Manchuria* (1905) *id.*, p. 52; *Cargo ex. Manchuria* (1905) *id.*, pp. 61, 65, 69; Japanese Regulations Relating to Capture at Sea, Articles 3 and 4, *id.*, p. 422; International Law Topics and Discussions, Naval War College, 1905, p. 191.

¹⁰⁹*Prisenordnung*, Art. 20, b.

of their owner, or, if he is of no nationality or of double nationality (*i. e.*, both neutral and enemy), by his domicile in a neutral or enemy country;

"Provided that goods belonging to a limited liability or joint stock company are considered as neutral or enemy according as the company has its headquarters in a neutral or enemy country."¹¹⁰

The compromise failed to secure adoption.¹¹¹ As long as private property at sea is subject to capture it is unfortunate that the test of enemy character is thus left open, and it is hoped that the existing divergence of views among the maritime nations on this point may give place to unanimity.

RUSSELL T. MOUNT.

NEW YORK CITY.

¹¹⁰General Report on the Declaration of London by its drafting committee, *The American Journal of International Law*, Supplement, April, 1914, pp. 133, 134.

¹¹¹A discussion of this question by James Brown Scott appears in the *American Journal of International Law*, July, 1914, pp. 535-540.